80-195

IN THE

Supreme Court of the United States

October Term, 1980

METROMEDIA, INC.,

Appellant,

v.

CITY OF SAN DIEGO, a municipal corporation, and DOES I through XX, inclusive,

Appellees.

PACIFIC OUTDOOR ADVERTISING CO., INC.,

Appellant,

v.

THE CITY OF SAN DIEGO, a municipal corporation, THE CITY COUNCIL OF SAN DIEGO and DOES I through 10, inclusive,

Appellees.

On Appeal from the Supreme Court of California

BRIEF OF THE STATES OF HAWAII, MAINE and VERMONT AMICUS CURIAE

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INTRODUCTION

Pursuant to Rule 36(4) of this Honorable Court, the States of Hawaii, Maine and Vermont hereby submit this *amici curiae* brief in support of the appellee City of San Diego.

INTEREST OF THE AMICI STATES

In this case, appellants challenge the constitutionality of an ordinance of the City of San Diego which prohibits all off-premises outdoor advertising and requires the removal of existing billboards following the expiration of an amortization period. Appellants contend that the ordinance violates their rights to freedom of speech under the First and Fourteenth Amendments and constitutes an improper use of the police power in violation of the Fourteenth Amendment. The opinion of the Supreme Court of California, now before this Court for review, rejected these contentions, finding that the challenged ordinance is a constitutionally valid "time, place and manner" restriction on speech, and that it reasonably furthers the legitimate legislative goals of improving the appearance of the city, attracting tourism and eliminating traffic hazards.

The amici states have each enacted statutes which operate in essentially the same manner as the San Diego ordinance in prohibiting new off-premises outdoor advertising from being established within their borders, and providing for the compensated or amortized removal of existing billboards. In addition, the constitutionality of the statute of one of the amici states, Maine, has been challenged by the outdoor advertising industry on the same two grounds as the challenge which is being made here. The Maine Act was sustained by the United States District Court for the District of Maine, in an opinion relied upon below by the Supreme Court of California in this case. *John Donnelly & Sons v. Mallar*, 453 F.Supp. 1272 (D. Me. 1978). This decision was reversed by the United States Court of Appeals for the First Circuit *sub nom. John Donnelly & Sons v. Campbell*, __F.2d__ (1st Cir., December 22, 1980), but only with regard to the Act's prohibitions on non-commercial speech. Thus, any decision of this Court invalidating the San Diego ordinance on

either of the two grounds presented for review will result in the judicial invalidation of the entire Maine Act, and render unenforceable the Hawaii and Vermont statutes as well.

The following is a brief description of the principal features of the three statutes which will be affected by the Court's decision in this case:

1. Hawaii. The State of Hawaii provides for the conservation and development of public sightliness and the conservation and protection of its natural beauty in Hawaii Constitution, Article IX, Section 7 and Article XI, Section 1. Hawaii Revised Statutes, Sections 445-111 through 445-121 ban outdoor advertising devices with listed exceptions. Those exceptions allow on-premises advertising and allow political signs within a fifty-five day period that brackets elections, among other things. H.R.S. § 445-112(3), (4) and (11). The statute also allows counties to regulate the size, construction, color, illumination, location and appearance of signs allowed by the statute, among other things. H.R.S. § 445-113. Hawaii Revised Statutes, Sections 264-71 through 264-79 limit outdoor advertising along federal-aid and state highways to certain official directional and historic signs, landmark signs and certain on-premises advertising, and provided for the compensated removal of all non-conforming signs by 1975. The Hawaii Supreme Court has upheld the regulation of signs for aesthetic reasons alone, stating: "We accept beauty as a proper community objective, attainable through the use of the police power." *State v. Diamond Motors, Inc.*, 50 Haw. 33, 36; 429 P.2d 825, 827 (1967). Thanks in large measure to its laws, Hawaii is free of billboards as they are known on the mainland United States.

2. **Maine.** In 1977, the Maine Legislature passed the Maine Traveler Information Services Act, 23 M.R.S.A. § 1901, *et seq.*, with the same objectives as those of the City of San Diego (improving the appearance of the state, promoting tourism, and eliminating traffic hazards). See the legislative findings of fact set forth at Section 1901 of the Act. Like the San Diego ordinance, the Maine Act prohibits off-premises advertising, as defined, but specifies a number of categories of signs which are expected from the prohibition. 23 M.R.S.A. § 1913. Among these are political signs erected within three weeks of an election, primary or referendum. 23 M.R.S.A. § 1913(1) (I).

Next, the Act provides that those off-premises billboards lawfully in existence on the effective date of the Act which are visible from the federal interstate or primary highway systems shall be subject to compensated removal over a four year period ending January 1, 1982. 23 M.R.S.A. § 1915. Over 60 percent of these boards have been acquired as of the date of this brief, at a cost to the federal and state governments of over $2,500,000. All other off-premises signs, constituting approximately 20 percent of all boards in the state, are to be removed following the expiration of a six year amortization period on January 1, 1984. 23 M.R.S.A. § 1916. Finally, the Act provides for the erection of tourist information centers and standardized official business directional signs for the assistance of the traveling public. 23 M.R.S.A. §§ 1905, 1906, 1909-12, 1918.

3. Vermont. The Vermont Legislature passed the Vermont Tourist Information Services Act with amendments in 1969, 1975, 1977 and 1979. 10 V.S.A. § 481 *et seq.* The Act has the same purposes as the San Diego ordinance of improving the state's appearance, reducing traffic hazards and promoting tourism. See the legislative findings of fact set out at 10 V.S.A. § 482. The Vermont Act, like the San Diego ordinance, prohibits off-premises advertising, but exempts certain categories of signs. 10 V.S.A. § 494. Unlike San Diego, Vermont makes no special provision for political campaign signs. Vermont also provided for compensation when the billboard was on a state highway and compensation was mandated by Federal law, 10 V.S.A. § 496, and has expended over $500,000 in state and federal funds to acquire boards in this category. For other off-premises signs, a five-year amortization period was allowed. 10 V.S.A. § 496. That period expired for all affected signs on March 23, 1973. The Act also provides for alternative means of communicating with the traveling public, including licensing of standard official business directional signs, tourist information centers, and state published guidebooks and maps. Thus, Vermont has completed the change from its former system of outdoor advertising to its present system of tourist information services. The public and advertisers of the state have completed the adjustment and operated under the present system for over seven years.

CONCLUSION

Each of these amici has reviewed the brief of the City of San Diego and the brief for the United States, *amicus curiae*. Each amici respectfully joins the contentions of the City of San Diego and the United States that the San Diego ordinance does not violate the First Amendment guarantee of freedom of speech and constitutes a valid exercise of the police power, and therefore urges that the judgment of the Supreme Court of California be affirmed.

Respectfully submitted,

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